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September 27, 2021

Administrator Michael S. Regan
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Ohio and 15 other States' comments regarding the proposed rule "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards," 86 Fed. Reg. 43726 (Aug. 10, 2021).

Dear Administrator Regan:

Ohio and 15 other States submit these comments in opposition to the notice of proposed rulemaking entitled, "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards," set forth at 86 Federal Register 43726 (Aug. 10, 2021). The proposed rule revises the light-duty-vehicle greenhouse-gas standards established by the Safer Affordable Fuel-Efficient Vehicles Rule promulgated in April 2020. More precisely, the proposed standards would increase carbon emissions stringency, from the current annual increase of approximately 1.5 percent, to an approximate 10 percent increase in 2023, followed by approximately 5 percent increases through 2026.[1]

The proposed rule is transparently outcome driven, not the product of reasoned decisionmaking. The EPA repeatedly acknowledges that, in developing the proposed rule, it considered California uniquely. But California's unconstitutional favoritism under the Clean Air Act, and attempted domination of federal policy, is not a valid basis for promulgating nationwide emissions standards. Moreover, the proposed standards rest on an overly speculative cost-benefit analysis and entirely fail to consider how reliance on China for raw materials and manufacturing will harm our national security.

The proposed rule should be withdrawn.

[1] 86 Fed. Reg. at 43731, 43733 (Table B, evaluating stringency for cars and trucks combined).

I. A CALIFORNIA PARTNERSHIP IS NOT A VALID BASIS FOR ESTABLISHING NATIONWIDE CARBON EMISSIONS STANDARDS.

When the EPA released its proposed rule, the White House released congratulatory statements from stakeholders—automakers, auto worker unions, climate activists, and California. "We look forward to continuing our decades-long collaboration with federal partners to build on California's clean car leadership and deliver the investments needed to support the nationwide build-out of clean vehicle infrastructure," Governor Newsom provided.[2] No other State is included in this partnership: not, for example, Ohio, which ranked first in car production in 2018,[3] Kentucky, which has the highest light-vehicle production per capita,[4] or Michigan, which leads the nation in auto-manufacturing jobs[5].

The proposed rule emphasizes throughout the outsized role California played in creating the proposed standards. The EPA "coordinated extensively with the California Air Resources Board," as it developed the proposal.[6] "California has long been a partner in reducing light-duty vehicle emissions, often leading the nation by setting more stringent standards before similar standards are adopted by EPA."[7]

Indeed the EPA attempts to color its proposal as reasonable given existing automaker behavior pursuant to California's Framework Agreements.[8] It boasts: "the California Framework Agreements were a key consideration in our development and assessment of the proposed EPA standards."[9] The only reason California was able to establish "Framework Agreements" upon which the EPA heavily relies is due to the possibility that California would regain its waiver of preemption under section 209(b)(1) of the Clean Air Act, allowing California, and only California, to set emissions standards that are more stringent than those adopted by the federal government.[10] The Framework Agreements, signed by BMW, Ford, Honda, Volvo, and Volkswagen, are largely premised on these automakers' belief, or at least uncertainty, that California would again hold outsized regulatory power through a section 209(b) waiver.[11]

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[2] Statements on the Biden Administration's Steps to Strengthen American Leadership on Clean Cars and Trucks, The White House (Aug. 5, 2021), https://perma.cc/88QT-N7UR.
[3] The Ohio Motor Vehicle Report, Ohio Developmental Services Agency (Feb. 2019), https://perma.cc/523Z-QGP6, at page 1.
[4] KY Auto Industry Facts, Kentucky Automotive Industry Association (last visited Sept. 21, 2021), https://perma.cc/WS8R-NJ8D.
[5] Julie Mack, *Michigan remains No. 1 in auto manufacturing, and more fast facts*, MLive (updated May 20, 2019), https://perma.cc/GME5-GQ34.
[6] 86 Fed. Reg. at 43755.
[7] 86 Fed. Reg. at 43755.
[8] 86 Fed. Reg. at 43739.
[9] 86 Fed. Reg. at 43782.
[10] 42 U.S.C. §7543(b)(1); S. Rep. No. 91-1196, 32 (June 30, 1970).
[11] *See, e.g.*, Settlement Agreement between the California Air Resources Board and BMW (Aug. 17, 2020), https://perma.cc/N5BB-SW6L.

Unsurprisingly, then, the EPA has proposed standards that closely resemble the California Framework projected targets.[12]

Section 202(a) of the Clean Air Act requires the EPA to establish national standards for emissions of pollutants from new motor vehicles which cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.[13] The EPA must consider technological feasibility[14] and costs to regulated entities.[15] The EPA may consider other factors reasonably allowed by Congress, like safety issues.[16] But no reasonable interpretation of the statute allows California, and California alone, to be a factor in setting national motor-vehicle emissions standards. And an agency rule is arbitrary and capricious where it "relie[s] on factors which Congress has not intended it to consider." *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

The EPA engages in this illegitimate partnership with California given California's special status under section 209 of the Clean Air Act. But Section 209(b)(1) violates the doctrine of equal-sovereignty—a doctrine inherent in our Constitution and express in Supreme Court precedent—by allowing California to exercise sovereign authority that the Act takes from every other State. This unequal treatment is unconstitutional, full stop. Because section 209(b) is unconstitutional, and because the EPA has embedded unequal treatment into its proposed rule, any final rule based on the EPA proposal is arbitrary, capricious, and contrary to law.

A. The Constitution and Supreme Court precedent require States to be treated as equal sovereigns.

As just explained, the EPA's proposed rule rests largely on the idea that California has unique authority to regulate air quality under the Clean Air Act. The Act does indeed say that, in Section 209(b)(1). But the Act's special treatment of California violates the Constitution. And the EPA cannot reasonably rely on California's ability to wield unconstitutional power over her sister States.

The United States of America "was and is a union of States, equal in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself."[17] This "'constitutional equality' among the States,"[18] derives from the Constitution's text and structure.

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[12] Table 20, 86 Fed. Reg. at 43747.
[13] 42 U.S.C. §7521(a).
[14] *Id.* at §7521(a)(2).
[15] *See, e.g., Coalition for Responsible Regulation v. EPA*, 684 F.3d 102, 128 (D.C. Cir. 2012), *rev'd in part on other grounds sub nom. Utility Air Reg. Grp v. EPA*, 573 U.S. 302 (2014).
[16] *See Natural Resource Defense Council v. EPA*, 655 F.2d 318, 336 n. 31 (D.C. Cir. 1981).
[17] *Coyle v. Smith*, 221 U.S. 559, 567 (1911).
[18] *Franchise Tax Bd. v. Hyatt*, 136 S. Ct. 1277, 1283 (2016) (citation omitted).

Indeed, the principle is so deeply embedded in our constitutional order that the Supreme Court treats the States' sovereign equality as a "truism."[19] The equal-sovereignty of the States is one of those principles that, while "not spelled out in the Constitution," is "nevertheless implicit in its structure and supported by historical practice."[20]

To see why, begin at the beginning. When the States declared their independence from Britain, "they claimed the powers inherent in sovereignty—in the words of the Declaration of Independence, the authority 'to do all … Acts and Things which Independent States may of right do.'"[21] By then, one key aspect of the sovereignty possessed by the States consisted of their "equal sovereignty."[22] "The notion of a 'State' with fewer sovereign rights than another 'State' was unknown to the law of nations."[23] And the States would have understood themselves to possess this fundamental aspect of sovereignty.

Years later, in 1789, the Framers famously "'split the atom of sovereignty,'" dividing sovereign authority between the States and the federal government.[24] This division of authority "limited … the sovereign powers of the States."[25] But these changes did not *abolish* the States' sovereignty; to the contrary, the States "retained 'a residuary and inviolable sovereignty.'"[26] One key aspect of the States' retained sovereignty included the longstanding notion of "equal sovereignty."[27] Again, that had long been understood as an essential aspect of sovereignty.[28] While the Constitution limited the States' sovereignty in some ways, it nowhere took from the States' their sovereign equality.

Moreover, the "constitutional equality of the States is essential to the harmonious operation of the scheme upon which the Republic was organized."[29] As one distinguished jurist recognized early in her legal career, the equal footing doctrine "rests on concepts of federalism."[30] "The Constitution, in all its provisions,

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[19] *Virginia v. West Virginia*, 246 U.S. 565, 593 (1918).
[20] *Franchise Tax Bd. v. Hyatt*, 139 S. Ct. 1485, 1498 (2019); *accord see Seila Law LLC v. CFPB*, 140 S. Ct. 2183, 2205 (2020).
[21] *Murphy v. NCAA*, 138 S. Ct. 1461, 1475 (2018) (quoting Declaration of Independence ¶32).
[22] Anthony J. Bellia, Jr. & Bradford R. Clark, *The International Law Origins of American Federalism*, 120 Colum. L. Rev. 835, 935 (2020).
[23] *Id*. at 937–38.
[24] *Gamble v. United States*, 139 S. Ct. 1960, 1968 (2019) (quoting *Alden v. Maine*, 527 U.S. 706, 751 (1999)).
[25] *Murphy*, 138 S. Ct. at 1475.
[26] *Murphy*, 138 S. Ct. at 1475 (quoting The Federalist No. 39, p.245 (C. Rossiter ed. 1961)).
[27] Bellia & Clark, *International Law Origins*, 120 Colum. L. Rev. at 935.
[28] *Id*.
[29] *Coyle*, 221 U.S. at 580.
[30] Sonia Sotomayor de Noonan, Note, *Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights*, 88 Yale L.J. 825, 835 (1979).

looks to an indestructible Union, composed of indestructible States."[31] If the States' sovereignty could be reduced unequally, then the States would be in no relevant sense "indestructible"; a State is the sum of its sovereign authority, and a rule allowing the unequal reduction of sovereign authority would allow politically powerful States to win limits on sister States' authority. In addition to undermining "the integrity, dignity, and residual sovereignty of the States,"[32] political rent-seeking of that sort would undermine a key virtue of federalism. Our federalist structure "makes government 'more responsive by putting the States in competition for a mobile citizenry.'"[33] Competition between the States gives all States incentive to make policy attractive to the People. The virtue of competition would be seriously hampered if the States could compete by harming their rivals rather than by improving themselves.

Equal sovereignty follows from Supreme Court precedent, too. The Supreme Court long ago recognized that every State, as a matter of "the constitution" and "laws" of admission is "admitted into the union on an equal footing with the original states."[34] "[N]o compact," the Supreme Court has explained, can "diminish or enlarge" the rights a State has, as a State, when it enters the Union.[35] Put differently, "a State admitted into the Union enters therein in full equality with all the others, and such equality may forbid any agreement or compact limiting or qualifying political rights and obligations."[36] This principle precludes any arrangement in which one State is admitted on less-favorable terms than any other.[37] Conversely, it bars any State from being admitted on terms *more favorable* than those extended to its predecessors.[38] Each State has the right, "under the constitution, to have and enjoy the same measure of local or self government, and to be admitted to an equal participation in the maintenance, administration, and conduct of the common or national government."[39]

Of course, the Constitution guarantees "equal *sovereignty*, not … equal treatment in all respects."[40] To demand that every law benefit everyone and everything equally "would make legislation impossible and would be as wise as to try to shut off the gentle rain from heaven because every man does not get the same quantity of water."[41] Put a lot less poetically and a lot more bluntly: "Perfect

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[31] *Texas v. White*, 1 Wall. 700, 725 (1869).
[32] *Bond v. United States*, 564 U.S. 211, 221 (2011).
[33] *Id.* (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991)).
[34] *Pollard v. Hagan*, 44 U.S. 212, 229 (1845).
[35] *Id.* at 229.
[36] *Stearns v. Minnesota*, 179 U.S. 223, 245 (1900); *see also Coyle*, 221 U.S. at 568.
[37] *See Or. ex rel. State Land Bd. v. Corvallis Sand & Gravel Co.*, 429 U.S. 363, 378 (1977).
[38] *United States v. Texas*, 339 U.S. 707, 717 (1950).
[39] *Case v. Toftus*, 39 F. 730, 732 (C.C.D. Or. 1889).
[40] Thomas Colby, *In Defense of the Equal Sovereignty Principle*, 65 Duke L. J. 1087, 1149 (2016) (emphasis added).
[41] *State ex rel. Webber v. Felton*, 77 Ohio St. 554, 572 (1908).

uniformity and perfect equality" in law "is a baseless dream."[42] So it is when it comes to the States. Congress frequently treats States differently in unremarkable ways, such as when it locates naval bases in States with coastlines, or directs funding to projects in particular States. Such laws create no equal-sovereignty issues. The equal-sovereignty doctrine demands "parity" *only* "as respects political standing and sovereignty."[43]

Congress may not unequally limit or expand the States' "political and sovereign power,"[44] and must instead adhere to the principle that no State is "less or greater … in dignity or power" than another.[45] Disparate limitations on the States' sovereignty thus violate the equal-sovereignty doctrine.

In using California's super-sovereign authority as a basis for the proposed rule, the EPA relied on a statute that is not even constitutional. It is inherently arbitrary and capricious, and contrary to law, to adopt a standard predicated on an unconstitutional law.

B. If Congress intended for California's waiver to dictate national standards, it would have said so.

Even if California exceptionalism were appropriate under our federalist system, the EPA has the appropriate inquiry exactly backwards. Under the proposed rule, California sets its desired emissions policy, and then the federal government seeks to conform. But under the statute, California may only be granted a waiver if the EPA determines its standards are "at least as protective of public health and welfare as applicable Federal standards."[46] This scheme shows that EPA must make its determination *first*—finalizing a national standard that is protective of air quality, feasible, and reasonable—and *then*, after it has established a standard, consider any proposals from California.

This ordering makes sense, especially because giving California special treatment up front has concrete negative effects in other States when it comes to carbon emissions. Conforming with carbon-emission standards requires vehicle manufacturers to make "changes to the entire vehicle."[47] Because car manufacturers make only one national fleet, whatever standard California invents becomes the national standard. This means the vehicles available to Ohioans are not governed by Ohio's standards or the Federal government's standards, but rather by California's standards. That not only offends the Constitution, but it makes bad policy. The

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[42] *Edye v. Robertson* (*The Head Money Cases*), 112 U.S. 580, 595 (1884).
[43] *Texas*, 339 U.S. at 716.
[44] *Id*. at 719-20.
[45] *Coyle*, 221 U.S. at 566.
[46] 42 U.S.C. §7543(b)(1).
[47] 83 Fed. Reg. 42986, 42999 (Aug. 24, 2018).

annual household income for a family in Ohio is almost $19,000 less than the annual income for a family in California.[48] Thus, Ohioans may not be able to afford drastic changes mandated by California, leading Ohioans to drive older vehicles for longer and exacerbating the problem California believes it is solving. Ohio and California have different key industries, different commuting patterns, and different access to alternative fuel stations, and reasonably need different vehicles or different timelines to transition to new vehicles.

Where the EPA considers the States equally in setting standards, it can assess feasibility in the manner Congress intended. Where it considers California at the outset, all other States are cut out, it creates an irrational policy that favors certain States in a manner Congress never intended.

II. THE PROPOSED RULE IS IRRATIONAL, AS IT RESTS ON A BASELESS BENEFIT ANALYSIS.

EPA describes that an "essential" factor to the proposed rule is reducing carbon emissions, "given the urgency of the climate crisis."[49] According to the proposed rule, "[t]he monetized benefit of these GHG reductions is estimated at $22 billion to $280 billion across a range of discount rates and values for the social cost of carbon."[50] That's a broad enough range to deduce that the monetized benefit is fantasy, not reality.

The proposed rule takes its estimate range from numbers produced by the Interagency Working Group on Social Costs of Greenhouse Gases in February 2021.[51] The February 2021 document is merely a recitation of estimates produced in 2016, using 2020 dollars.[52] And despite their importance to regulatory decisionmaking, the 2021 estimates were not subjected to notice-and-comment procedures.

The 2016 estimates,[53] which include average estimates from three "integrated assessment models" and one unlikely but doomsday scenario, do not provide a reasonable basis for decisionmaking. The 2016 estimates purport to predict the amount of warming that all greenhouse gases now and in the future will create, the effects that warming will have on society, and the costs of those effects. But in doing

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[48] *Compare* U.S. Census Bureau, QuickFacts: Ohio, https://perma.cc/N52Q-KKM3, *with* U.S. Census Bureau, QuickFacts: California, https://perma.cc/7SVJ-R9GG.
[49] 86 Fed. Reg. at 43785.
[50] *Id*.
[51] *Id*. at 43789.
[52] February 2021 Technical Support Document (TSD): Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates at 4, https://perma.cc/WWA6-RBWL ("These estimates are reported in 2020 dollars but are otherwise identical to those presented in the previous version of the TSD and its Addendum, released in August 2016.").
[53] Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 (August 2016), https://perma.cc/S8X9-VQT9.

so, the 2016 estimates incorporate unreliable assumptions rather than data. As one economist described the integrated assessment models, they allow "the modeler to obtain almost any desired result because key inputs can be chosen arbitrarily."[54]

For example, the 2016 estimates result from the integrated assessment models being run through the year 2300, and calculate present day costs based on that speculative future harm. To put this absurdity into context, three hundred years ago, in the era of Sir Isaac Newton, social-cost evaluators may well have recommended the wholesale abolishment of cities, considering the costs of horse waste (unimaginably high, if today we all still rode horses)[55] and rampant disease (like smallpox and dysentery). But today we have automated transportation, running water, modern medicine, and advanced farming. There is simply no scientific way to fasten a 2021 rule around 2300 predictions. Nor do the 2016 estimates attempt to explain why a 300-year time horizon is scientifically appropriate.[56]

The assumptions underlying EPA's benefit guess are also badly out of date, and thus don't reflect updated realities that conflict with inputs to the predictive models.[57] The predicted climate future scenarios (the amount of carbon that would otherwise be emitted) were established in 2010.[58] These assumptions incorporate four "business as usual" scenarios and one that incorporates a "lower-than" business as usual potential—and each scenario is weighted equally in estimating the social cost of carbon. Thus the trendline the EPA uses to calculate savings is based on an alternate reality where the world continues to burn immense amounts of coal and engage in other energy policies that are becoming obsolete. Reality since 2010 shows a different likelihood. Since 2007, for example, energy-related carbon emissions in the United States declined eight out of 12 years,[59] not counting 2020 where global energy-related carbon emissions declined by almost 6 percent.[60]

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[54] Robert S. Pindyck, *Climate Change Policy: What do the Models Tell Us?*, National Bureau of Economic Research Working Paper 19244, at 16 (2013).

[55] Ben Johnson, *The great horse manure crisis of 1894*, Historic UK (last visited Aug. 19, 2021), https://perma.cc/9U4E-VART.

[56] This time horizon also conflicts with standard Executive Branch regulatory analyses, which generally do not consider effects beyond fifty years. *See, e.g.*, Arden Rowell, *Foreign Impacts and Climate Change*, 39 HARV. ENVTL. L. REV. 371, 386 (2015).

[57] For example, the estimates incorporate the findings of the Fourth Assessment Report of the Intergovernmental Panel on Climate Change. But that Panel has since published a Fifth Assessment Report that increases the probabilities associated with a lower average temperature increase. *See* The Intergovernmental Panel on Climate Change, Climate Change 2014 Synthesis Report at 43, 62 (2015), https://perma.cc/C55X-EYP9.

[58] Technical Support Document: Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 at 15-17 (Feb. 2010), https://perma.cc/4L2C-TKC6.

[59] U.S. Energy-Related Carbon Dioxide Emissions, 2019, U.S. Energy Information Administration (Sept. 30, 2020), https://perma.cc/74SU-7RZY.

[60] *The Covid-19 pandemic resulted in the largest-ever decline in global emissions*, International Energy Agency (Mar. 2, 2021), https://perma.cc/G5G4-UXNL.

Moreover, the estimated "benefit" uses *global* benefits, though the calculated "costs" of the rule consider only *local* costs. Incorporating global benefits makes an enormous difference: the global cost of carbon numbers are many times greater than considering domestic effect alone.[61] Not only does this compare apples and oranges, but it contravenes the Clean Air Act's text and longstanding Executive Branch practice. The statute nowhere contemplates that benefits should be calculated in such a manner. The 2016 estimates explain that using a global estimate of damages, "sends a strong signal to other nations that they too should base their emissions reductions strategies on a global perspective, thus supporting a cooperative and mutually beneficial approach to achieving needed reduction."[62] If Congress intended the Clean Air Act to function as a tool for the EPA Administrator to engage in global relations, it must say so. The 2016 estimates further explain that "adverse impacts on other countries can have spillover effects on the United States, particularly in the areas of national security, international trade, public health, and humanitarian concerns."[63] The Clean Air Act is not an international statute, and certainly not an international trade, security, or humanitarian statute. Instead, the Act specially instructs agencies "to protect and enhance the quality of *the Nation's* air resources so as to promote the public health and welfare and the productive capacity of *its population*."[64] And when the Clean Air Act allows agencies to contemplate global effects, it does so clearly.[65] Accordingly, the Act's authorization to consider "public health or welfare" allows for consideration of effects to the American people only.[66] Moreover, considering global benefits conflicts with longstanding best regulatory practices, as reflected in Office of Management and Budget Circular A-4, which instructs agencies to consider only domestic benefits.[67] Thus achieving such global benefits, to the extent they exist, are outside the range of the duties of the EPA Administrator and any final rule must consider those factors Congress reasonably intended the agency to consider.

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[61] *See* Jean Chemnick, *Cost of Carbon Pollution Pegged at $51 a Ton*, Scientific American (Mar. 1, 2021), https://perma.cc/S67W-274H.

[62] Technical Support Document: Technical Update of the Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866 at 17 (August 2016), https://perma.cc/S8X9-VQT9.

[63] *Id*.

[64] 42 U.S.C. §7401(b)(1) (emphasis added).

[65] *See, e.g.*, 42 U.S.C. §7415 (entitled "International air pollution").

[66] 42 U.S.C. §7521(a)(1); *see also* Ted Gayer & W. Kip Viscusi, *Determining the Proper Scope of Climate Change Policy Benefits in U.S. Regulatory Analyses: Domestic Versus Global Approaches*, 10 REV. ENVTL. ECON. & POL'Y 245 (2016) ("Presumably the 'public' being referred to in this provision is that of the nation, as there is no indication of a broader set of concerns with respect to the purposes of the CAA.").

[67] Office of Management and Budget, Circular A-4, Regulatory Analysis *noticed at* 68 Fed. Reg. 58366 (Oct. 9, 2003) ("Your analysis should focus on benefits and costs that accrue to citizens and residents of the United States. Where you choose to evaluate a regulation that is likely to have effects beyond the borders of the United States, these effects should be reported separately.").

The arbitrariness and illogic behind the assumptions EPA currently incorporates render any similar final rule motivated by outcome, rather than by reasoned decisionmaking.

III. THE PROPOSED RULE FAILS TO ADEQUATELY CONSIDER NATIONAL SECURITY IMPACTS.

The proposed rule considers as a benefit "reductions in energy security externalities caused by U.S. petroleum consumption and imports."[68] On one hand, that is a concern of the Administration's own choosing, as the United States produced more energy than it consumed in 2019 for the first time in 62 years, [69] and remained a net exporter in 2020.[70]

Regardless, the proposed rule entirely fails to mention the additional risks to the transportation sector, even if certain risks are alleviated in the energy sector. China dominates the lithium-ion battery market, and is poised to capture a greater share with time.[71] China is home to three-quarters of the global manufacturing capacity for lithium-ion batteries, while the United States has only 12 percent.[72] Not only does China own the final manufacturing process, but China also "controls 80 percent of the world's raw material refining in the lithium-ion battery supply chain, 77 percent of the world's cell capacity, and 60 percent of the world's component manufacturing."[73] This is not merely a problem of manufacturing, which through various incentives could theoretically be on-shored. China controls 90 percent of the *supply* of rare-earth magnets, which work to power electric vehicles.[74] Dependence on China for our transportation is a national security threat—one that cannot be overcome overnight. The EPA failed to consider whether the proposed timeframe to change our vehicle fleet will create an overreliance on China, given the current lack of manufacturing and raw materials in United States control. Such failure renders any final rule arbitrary, but more importantly, dangerous.

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[68] 86 Fed. Reg. at 42740.
[69] The United States Was Energy Independent in 2019 for the First Time Since 1957, Institute for Energy Research (May 11, 2020), https://perma.cc/PV37-NVWK.
[70] The United States was a net total energy exporter in 2019 and 2020, U.S. Energy Information Administration (last updated May 17, 2021), https://perma.cc/U85M-JDRN.
[71] Trefor Moss, *The Key to Electric Cars Is Batteries. One Chinese Firm Dominates the Industry*, Wall Street Journal (Nov. 3, 2019), https://perma.cc/G6B3-SDWN.
[72] Robert Rapier, *Why China Is Dominating Lithium-Ion Battery Production*, Forbes (Aug. 4, 2019), https://perma.cc/YNQ4-2U94.
[73] *China Dominates the Lithium-ion Battery Supply Chain, but Europe is on the Rise*, BloombergNEF (Sept. 16, 2020), https://perma.cc/MGU7-YH7D.
[74] Eric Onstad, *China frictions steer electric automakers away from rare earth magnets* (July 19, 2021), https://www.reuters.com/business/autos-transportation/china-frictions-steer-electric-automakers-away-rare-earth-magnets-2021-07-19/.

The Clean Air Act was designed to "protect and enhance the quality of the Nation's air resources."[75] Since that time, technological advances from American innovators have worked to create a 78 percent drop in criteria and precursor pollutants, all while our economy remained strong.[76] But rather than advance this positive trend, the proposed rule attempts to please California, which remains the single most problematic State in attaining National Ambient Air Quality Standards.[77] The EPA has disbanded its mission of improving the air Americans breathe, and focused instead on receiving international recognition for climate leadership.[78] In doing so, it has left consumers, manufacturers, our Constitution, and American security behind.

Yours,

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[75] 42 U.S.C. §7401(b)(1).
[76] Our Nation's air trends through 2020, Environmental Protection Agency (last visited Aug. 20, 2021), https://gispub.epa.gov/air/trendsreport/2021/#home.
[77] Counties Designated "Nonattainment", Environmental Protection Agency (Aug. 31, 2021), https://www3.epa.gov/airquality/greenbook/mapnpoll.html.
[78] 86 Fed. Reg. 7619, Executive Order 14008 of January 27, 2021, "Tackling the Climate Crisis at Home and Abroad."

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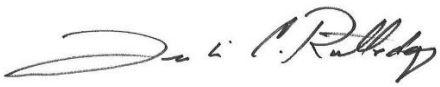

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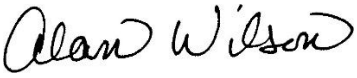

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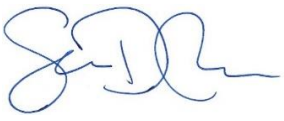

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